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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,094	07/01/2003	Isaac Weiser	03-11987	5817

25189 7590 01/24/2007  
CISLO & THOMAS, LLP  
233 WILSHIRE BLVD  
SUITE 900  
SANTA MONICA, CA 90401-1211

EXAMINER
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GARCIA, ERNESTO

ART UNIT	PAPER NUMBER
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3679

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/24/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/612,094

Applicant(s)

WEISER ET AL.

Examiner

Ernesto Garcia

Art Unit

3679

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 October 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5, 7 and 9-16 is/are pending in the application.
- 4a) Of the above claim(s) 1-3 and 12-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 4-7 and 9-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 April 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Restriction***

Claims 1-3 and 12-16 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicants timely traversed the restriction (election) requirement in the reply filed on November 1, 2004.

### ***Specification***

The disclosure is objected to because of the following informalities:

on page 8, line 20, --portion-- should be added after "member" since reference character 22 has been disclosed as a "connecting member portion". The description of similar reference characters used should be consistent throughout the specification. Appropriate correction is required.

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a) because they fail to show reference character "25" in Figure 2 as an aperture as described on page 6, lines 20 and 21, and page 7, lines 2 and 17. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d).

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended". If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the examiner does not accept the changes, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Objections***

Claim 4 is objected to because of the following informalities:

regarding claim 4, the recitation "a first end of the coil spring" in line 18 should be --the first coil portion-- since the recitation repeats lines 13-14 as the flexible connecting member is the coil spring. Appropriate correction is required. For purposes of examining the instant invention, the examiner has assumed these corrections have been made.

***Claim Rejections - 35 USC § 112***

Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 7, the recitation "for facilitating its securing to said second end of said connecting structure" makes unclear what is being secured to the second end of the connecting structure. Apparently, it cannot be the enclosure 42 as it is on the appendage.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 4, 5, and 9-11 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 21 of copending Application No. 11/416,431 in view of Tajima, 4,380,847.

Regarding claim 4, note that claim 21 of the application '431 recites all the features recited in claim 4 of the instant application with the exception of "the barrier being disposed between the first coil portion and the second coil portion" as required in claim 4, lines 20-21. Tajima teaches, in Figure 5, an L-shaped coil spring having a first

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coil portion, a second coil portion, a post 11 being inserted into a first end of the coil spring, and a barrier 12 being disposed between the first coil portion and the second coil portion to retain the coil spring in the post. Since claim 4 of the instant applicant does not recite the location of the barrier. One skilled in the art can turn to Tajima for placing the barrier between the two coil portions to retain the L-shaped coil spring in claim 21 of the application '431. Therefore, as taught by Tajima, it would have been obvious to one of ordinary skill in the art at the time the invention was made to dispose the barrier between the first coil portion and the second coil portion to retain the L-shaped coil recited in the application '431 to retain the coil in the post.

Regarding claim 5, note that claim 21, lines 9-10 makes reference to a bird wing thus a wing structure.

Regarding claim 9, the feature recited is an inherent property of the spring as any spring has a spring constant that allows at least one appendage to be freely movable with respect to a body responsive to a wind actuation.

Regarding claims 10 and 11, given the features in claim 21 of the application '431, the kit would be inherent as the same components are recited.

This is a provisional obviousness-type double patenting rejection.

Claim 7 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 21 of copending Application No. 11/416,431 in view of Tajima, 4,380,847, as applied to claims 4, 5, and 9-11, and further in view of Polk, 2,729,022.

Regarding claim 7, claim 21 of the copending application fails to recite the one or more appendages comprising an enclosure. Polk teaches, in Figure 5, an appendage 12 having an enclosure 40 to enclose an end of a coil spring for fastening the coil spring with a pin. Therefore, as taught by Polk, it would have been obvious to one of ordinary skill in the art at the time the invention was made to add an enclosure to further limit claim 21 of the copending application to enclose the end of the coil spring for fastening the coil spring with the pin.

This is a provisional obviousness-type double patenting rejection.

### ***Response to Arguments***

Applicants' arguments with respect to claims 4, 5, 7, and 9-11 have been considered but are moot in view of the new ground(s) of rejection.



***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. In particular, the new limitations "the coil spring comprising a first coil portion and a second coil portion" in claim 4, line 16, and "the barrier being disposed between the first coil portion and the second coil portion" in claim 4, lines 20-21, necessitated the new grounds of rejection. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ernesto Garcia whose telephone number is 571-282-

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7083. The examiner can normally be reached from 9:30-5:30. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached at 571-272-7087.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

E.L.

E.G.

January 10, 2007



DANIEL P. STODOLA  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600



TAW

STATEMENT OF THE SUBSTANCE OF THE INTERVIEW UNDER 37 C.F.R. 1.33(B)					
Application No.: <u>10 / 612,094</u> First Named Applicant: <u>WEISER, Isaac</u>					
Examiner: <u>GARCIA, Ernesto</u>		Art Unit: <u>3679</u>		Status of Application: <u>Pending</u>	
Participants:					
(1) <u>May Lin DeHaan</u>		(2) _____			
(3) _____		(4) _____			
Date of Interview: <u>10/19/2006</u>			Time: <u>11:24 am</u> (AM/PM)		
Type of Interview					
(1) <input checked="" type="checkbox"/> Telephonic (2) <input type="checkbox"/> Personal (3) <input type="checkbox"/> Video Conference					
Exhibit Shown or Demonstrated: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO					
If yes, provide brief description: _____					
Issues Discussed					
Issues (Rej., Obj., etc)	Claims/ Fig. #s	Prior Art	Discussed	Agreed	Not Agreed
(1) <u>Obj on grounds of informalities</u>	<u>Claims 4 and 10</u>	<u>N/A</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(2) <u>Rej. under 35 USC Sec. 112</u>	<u>Claims 4-7; 9-11</u>	<u>N/A</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(3) <u>Rej. under 35 U.S.C. 103 (a)</u>	<u>Claims 4; 9-11</u>	<u>Higdon (US5375363); Moore (US5716161); Del Mas (US2760303)</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(4) <u>Rej. under 35 USC 103(a)</u>	<u>Claims 5-7</u>	<u>Higdon (US5375363); Moore (US5716161); Del Mas (US2760303); Polk (US2792022)</u>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Continuation Sheet Attached					
Brief Description of Arguments : Presented:					
<u>Applicants' Attorney proposed amending the claims to include the language "...the coil spring comprising a first coil portion and a second coil portion, the coil spring further having an L-shaped configuration being formed by the first coil portion and the second coil portion, ..., and the barrier being disposed between the first coil portion and the second coil portion."</u>					
An interview was conducted on the above-identified application on <u>10/19/06</u>					
<u>May Lin DeHaan</u> (Applicant/Applicant's Representative Signature) May Lin DeHaan, Reg No. 42,472					

"Interview Record ok"  
P.L. 1/10/07 2007